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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1969.

No. 568.

J. E. WILSON,
Petitioner,

v.

STATE BAR OF GEORGIA, et al.,
Respondents.

BRIEF

In Opposition to Petition for Writ of Certiorari to the Supreme Court of Georgia.

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In Opposition to Petition for Writ of Certiorari to the Supreme Court of Georgia.

QUESTION PRESENTED.

The recitation in the Petition for Writ of Certiorari of the Question Presented for Review reflects such grave misconception, misunderstanding or misstatement of fact as to require comment and correction. The State Bar of Georgia has never, does not and cannot "legislate its own laws", "cite an attorney for disbarment", or "require the attorney (when he claims a violation of his constitutional rights) to appear before said Bar Association and let them rule whether or not their laws are constiutional . . ." With these assertions shown to be without foundation the Petition simply fails to present any question for review.

STATEMENT.

Respondents incorporate by reference and adopt the statement of the case contained in the opinion of the Supreme Court of Georgia and set out in the appendix of the Petition for Writ of Certiorari, beginning on page numbered 12 of that Petition.

The obvious way of correcting the misconception of the "Bar Association" as an organization "legislating its own laws" and generally riding rough shod over the rights, constitutional or otherwise, of its members is to examine the formation, organization and operation of the State Bar of Georgia. The State Bar is a unified bar which came into existence January 1, 1964. The General Assembly of Georgia passed an Act (Georgia Laws 1963, pp. 70-72) providing that the Supreme Court of Georgia establish "as an administrative arm of the Court, a unified, self-governing bar association to be known as the 'State Bar of Georgia'; . . . to provide for the adoption of rules and regulations by the Supreme Court for the organization and government of the unified bar, and to define the rights, duties and obligations of the members therein . . ."

By Order of the Supreme Court of Georgia dated December 6, 1963 (219 Georgia 873, et seq.) the State Bar of Georgia was created and established as a legal entity with such "powers, privileges and duties as may be reasonable and necessary for the proper fulfillment of its purposes." Its purposes were recited to be:

> "(a) To foster among the members of the Bar of this State the principles of duty and service to the public;
>
> (b) To improve the administration of justice; and
>
> (c) To advance the science of law."

Part IV of the Rules and Regulations adopted and approved by the Supreme Court of Georgia (219 Georgia

901, et seq.) applied to Discipline. Part IV was revised by Order dated May 9, 1968 (224 Georgia 879) and therein are set out the rules and regulations which were applicable to this disciplinary proceeding.

In the instant case, the State Disciplinary Board (Rule 4-201) received, made a preliminary investigation of, and evaluated a complaint, referring that complaint (Rule 4-202) to a duly constituted Grievance Tribunal (Rule 4-203). That Tribunal assigned a date for determination of probable cause or no probable cause (Rule 4-204) and afforded to Petitioner herein "an opportunity to be heard with respect to the complaint, either in person or by affidavit." Counsel for the State Bar served upon Petitioner herein a notice to produce certain books, papers and records alleged to be relevant and material to the investigation. There was no claim presented by Petitioner that such production would be self-incriminating, violative of the confidence of a client or violative of any right of Petitioner or anyone else; there was no production of the papers sought, nor any refusal to produce; there was no application made to quash or modify the notice to produce as specifically provided for by an Act of the General Assembly (Georgia Laws 1966, p. 502; Ga. Code Ann. 38-801 (b)). Instead, Petitioner filed the present action in the Superior Court to enjoin further proceedings by the Grievance Tribunal, quash the notice to produce and declare Rule 4-215 (b) of the Rules and Regulations of the State Bar of Georgia void as in violation of his rights under the Fifth and Fourteenth Amendments to the Constitution of the United States, and his obligation to protect the privileged communications of his clients. A temporary restraining order was granted ex parte, and thereafter that restraint was dissolved and, upon motion, the petition was dismissed. This judgment was affirmed by the Supreme Court of Georgia in the decision review of which is now sought.

One further observation. Had Petitioner herein refused to produce the documents sought the **only** recourse of the Grievance Tribunal which is without any contempt powers itself would have been to report the fact to the Superior Court where, as noted in the opinion of the Supreme Court of Georgia, "he would have ample opportunity at this hearing to assert his right against self-incrimination". It simply is **not** true as asserted on page 4 of the Petition for Writ of Certiorari that "the Rule provides that it is mandatory for the Superior Court to arrest petitioner and confine him to jail in violation of Article XIV, Section 1 of the United States Constitution". That statement is false as Rule 4-215 (b) provides "The State Disciplinary Board or a grievance tribunal shall have power to compel the attendance of witnesses and the production of books, papers, and documents relevant to the matter under investigation, by subpoena issued as hereinafter provided. Whenever any person subpoenaed to appear and give testimony or to produce books, papers, or documents required by such subpoena shall refuse to appear or testify before said State Disciplinary Board or grievance tribunal, or to answer any pertinent or proper question, . . . then any such person shall be deemed in contempt of said Board or tribunal, and it shall be the duty of the chairman or presiding officer of said Board or tribunal to report the fact to the superior court in and for the county in which said investigation, trial or hearing is being held; and thereupon, the said court shall issue an attachment in the form usual in said superior court, directed to the sheriff of said county commanding him to attach such person and forthwith bring him before such court. On the return of said attachment and the production of the person attached, the superior court shall have jurisdiction of the matter and the person may purge himself of the contempt in the same way, and the proceedings shall be had and the penalties may be imposed and the same punish-

ment inflicted as in the case of a witness subpoenaed to appear and give evidence on the trial of a civil cause before said superior court under the existing laws of the state."

Under the express quoted provisions of this Rule claimed by Petitioner to be violative of his constitutional rights the Tribunal would be without any authority until there should occur on his par a refusal "to appear or testify . . . or to answer any pertinent or proper question". That never occurred in the instant case but when and if it should occur then the only power in the Tribunal would be to report the fact to the Superior Court. Subparagraph (f) of this Rule 4-215 provides that "In all proceedings under this chapter, . . . the procedures and rules of evidence applicable in civil cases shall apply . . ." In the instant case, therefore, the applicable rule of procedure is found in Georgia Code Annotated (Supplement) as Section 38-801. Subsection (g) of that Code Section spells out the procedure for requiring the production of papers by a party and specifically preserves in that party the right to apply by written motion for an order which may quash or modify the subpoena "if it is unreasonable or oppressive". Subsection (b). It further provides for enforcement by attachment for contempt under Subsection (f) and this involves a hearing before that court before any contempt can be found to exist or be punished.

REASONS FOR NOT GRANTING THE WRIT.

No reason resting upon any fact appearing has been proposed for granting the writ.

1. The Rule sought to be invalidated as "legislation" by the bar association is a rule adopted and approved by the Supreme Court of Georgia at the instance of the

General Assembly of Georgia, as are all those rules organizing, creating, establishing and governing the State Bar of Georgia, the State Disciplinary Board and the grievance tribunals.

Georgia Laws 1963, pp. 70-72;
Order of Supreme Court of Georgia, 219 Ga. 873 et seq.;
Order of Supreme Court of Georgia, 224 Ga. 879 et seq.

The Act of the General Assembly and the Orders of the Supreme Court are valid and are not violative of any constitutional right as they provide for no denial of due process.

Wallace v. Wallace, 225 Ga. 102, 166 S. E. 2d 718 (1969);
Sams et al. v. Olah, No. 25,292, Supreme Court of Georgia (September 15, 1969).

2. The unsupported statement that the "Rule provides that it is mandatory for the Superior Court to arrest petitioner and confine him to jail in violation of Article XIV, Section 1 of the United States Constitution" is refuted by the language of the Rule itself as herein quoted. In the opinion of the Supreme Court of Georgia it was pointed out that "he would have ample opportunity at this hearing (before the judge of the superior court on the attachment for contempt) to assert his constitutional right against self-incrimination". Further, "All the authorities agree that a hearing must be accorded to one charged with a constructive contempt".

White v. George, 195 Ga. 465, 468, 24 S. E. 2d 787 (1943).

3. The Rules disclose no inherent vice of unconstitutionality and there remains only the contention of antici-

pated denial of due process in the future application of the rules. In this regard Petitioner herein is premature as he cannot complain of actual denial of due process, but only that he anticipates he will be denied his entitlement to due process by failure on the part of an inferior judicatory or on the part of the superior court to do that which it is required to do. Furthermore, not only is petitioner's complaint premature, but it also runs afoul of the well-established principle of law that it is presumed that public officials will obey the law.

Hogg v. City of Rome, 189 Ga. 298, 6 S. E. 2d 48, 50 (1939).

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that the petition for writ of certiorari should be denied.

Respectfully submitted,

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